



February 22, 2008

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## ENGROSSED SENATE BILL No. 166

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DIGEST OF SB 166 (Updated February 21, 2008 11:38 am - DI 97)

**Citations Affected:** IC 27-4; IC 27-8; IC 27-13.

**Synopsis:** Health insurance. Specifies requirements related to coverage of dialysis treatment under an accident and sickness insurance policy and a health maintenance organization contract, including in network and out of network dialysis treatment, payment rates, changes in benefits or coverage, claim payment, and reports to the department of insurance. Repeals the mandated benefit task force.

**Effective:** Upon passage; July 1, 2008.

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**Miller, Sipes**

(HOUSE SPONSORS — BROWN C, BUELL)

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January 8, 2008, read first time and referred to Committee on Health and Provider Services.

January 24, 2008, reported favorably — Do Pass.

January 28, 2008, read second time, ordered engrossed. Engrossed.

January 29, 2008, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Insurance.

February 21, 2008, amended, reported — Do Pass.

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ES 166—LS 6559/DI 104+



February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 166

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.131-2007,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 4. (a) The following are hereby defined as  
4 unfair methods of competition and unfair and deceptive acts and  
5 practices in the business of insurance:

6 (1) Making, issuing, circulating, or causing to be made, issued, or  
7 circulated, any estimate, illustration, circular, or statement:

8 (A) misrepresenting the terms of any policy issued or to be  
9 issued or the benefits or advantages promised thereby or the  
10 dividends or share of the surplus to be received thereon;

11 (B) making any false or misleading statement as to the  
12 dividends or share of surplus previously paid on similar  
13 policies;

14 (C) making any misleading representation or any  
15 misrepresentation as to the financial condition of any insurer,  
16 or as to the legal reserve system upon which any life insurer  
17 operates;

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- 1 (D) using any name or title of any policy or class of policies  
2 misrepresenting the true nature thereof; or  
3 (E) making any misrepresentation to any policyholder insured  
4 in any company for the purpose of inducing or tending to  
5 induce such policyholder to lapse, forfeit, or surrender the  
6 policyholder's insurance.
- 7 (2) Making, publishing, disseminating, circulating, or placing  
8 before the public, or causing, directly or indirectly, to be made,  
9 published, disseminated, circulated, or placed before the public,  
10 in a newspaper, magazine, or other publication, or in the form of  
11 a notice, circular, pamphlet, letter, or poster, or over any radio or  
12 television station, or in any other way, an advertisement,  
13 announcement, or statement containing any assertion,  
14 representation, or statement with respect to any person in the  
15 conduct of the person's insurance business, which is untrue,  
16 deceptive, or misleading.
- 17 (3) Making, publishing, disseminating, or circulating, directly or  
18 indirectly, or aiding, abetting, or encouraging the making,  
19 publishing, disseminating, or circulating of any oral or written  
20 statement or any pamphlet, circular, article, or literature which is  
21 false, or maliciously critical of or derogatory to the financial  
22 condition of an insurer, and which is calculated to injure any  
23 person engaged in the business of insurance.
- 24 (4) Entering into any agreement to commit, or individually or by  
25 a concerted action committing any act of boycott, coercion, or  
26 intimidation resulting or tending to result in unreasonable  
27 restraint of, or a monopoly in, the business of insurance.
- 28 (5) Filing with any supervisory or other public official, or making,  
29 publishing, disseminating, circulating, or delivering to any person,  
30 or placing before the public, or causing directly or indirectly, to  
31 be made, published, disseminated, circulated, delivered to any  
32 person, or placed before the public, any false statement of  
33 financial condition of an insurer with intent to deceive. Making  
34 any false entry in any book, report, or statement of any insurer  
35 with intent to deceive any agent or examiner lawfully appointed  
36 to examine into its condition or into any of its affairs, or any  
37 public official to which such insurer is required by law to report,  
38 or which has authority by law to examine into its condition or into  
39 any of its affairs, or, with like intent, willfully omitting to make a  
40 true entry of any material fact pertaining to the business of such  
41 insurer in any book, report, or statement of such insurer.
- 42 (6) Issuing or delivering or permitting agents, officers, or

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employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A)

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and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

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(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers.

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However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a

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different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to consumers.

(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

**(30) Violating IC 27-8-11-10, IC 27-8-11.1, or IC 27-13-15-5 concerning dialysis treatment.**

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel

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Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;

dishonest or predatory insurance practices.

SECTION 2. IC 27-8-11-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) The definitions in IC 27-8-11.1 apply throughout this section.**

**(b) An agreement entered into under section 3 of this chapter after April 30, 2008, must provide that if the insurer fails to pay, as specified by the agreement, for health care services rendered at a network dialysis facility, the insured is not liable for any sums owed by the insurer.**

SECTION 3. IC 27-8-11.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 11.1. Dialysis Treatment**

**Sec. 1. Except as provided in this chapter, the definitions in IC 27-8-11-1 apply throughout this chapter.**

**Sec. 2. As used in this chapter, "dialysis facility" means an outpatient facility in Indiana at which a dialysis treatment provider renders dialysis treatment.**

**Sec. 3. As used in this chapter, "insured" refers only to an insured who requires dialysis treatment.**

**Sec. 4. As used in this chapter, "insurer" includes the following:**

**(1) An administrator licensed under IC 27-1-25.**

**(2) An agent of an insurer.**

**Sec. 5. As used in this chapter, "network" refers to a group of providers, each of which has:**

**(1) individually; or**

**(2) as a member of a group;**

**entered into an agreement with a particular insurer under IC 27-8-11-3.**

**Sec. 6. As used in this chapter, "network dialysis facility" means a dialysis facility that has entered into an agreement with a particular insurer under IC 27-8-11-3.**

**Sec. 7. As used in this chapter, "out of network dialysis facility" means a dialysis facility that has not entered into an agreement with a particular insurer under IC 27-8-11-3.**

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1        **Sec. 8.** As used in this chapter, "policy of accident and sickness  
 2        insurance" has the meaning set forth in IC 27-8-5-1. The term does  
 3        not include the following:

- 4            (1) Accident-only, credit, dental, vision, Medicare supplement,  
 5            long term care, or disability income insurance.
- 6            (2) Coverage issued as a supplement to liability insurance.
- 7            (3) Worker's compensation or similar insurance.
- 8            (4) Automobile medical payment insurance.
- 9            (5) A specified disease policy issued as an individual policy.
- 10          (6) A limited benefit health insurance policy issued as an  
 11          individual policy.
- 12          (7) A short term insurance plan that:
- 13            (A) may not be renewed; and
- 14            (B) has a duration of not more than six (6) months.
- 15          (8) A policy that provides a stipulated daily, weekly, or  
 16          monthly payment to an insured during hospital confinement,  
 17          without regard to the actual expense of the confinement.

18        **Sec. 9.** To the extent that IC 27-8-11-4.5(c) and IC 27-8-11-4.5(d)  
 19        conflict with the requirements of this chapter, IC 27-8-11-4.5(c)  
 20        and IC 27-8-11-4.5(d) do not apply with respect to the  
 21        requirements of this chapter.

22        **Sec. 10.** A policy of accident and sickness insurance must  
 23        provide coverage for dialysis treatment regardless of whether an  
 24        insured obtains dialysis treatment from a network dialysis facility  
 25        or an out of network dialysis facility.

26        **Sec. 11.** An insurer that uses a network shall establish a  
 27        payment rate for a health care service rendered by a dialysis  
 28        treatment provider at an out of network dialysis facility:

- 29            (1) in consultation with the dialysis treatment provider; and
- 30            (2) based on the following:
- 31            (A) The type of health care service rendered.
- 32            (B) The fees usually charged by the dialysis treatment  
 33            provider.
- 34            (C) The prevailing rate paid to a dialysis treatment  
 35            provider by insurers in the same geographic area during  
 36            the preceding twelve (12) months.

37        **Sec. 12.** In establishing a payment rate under section 11 of this  
 38        chapter, an insurer shall:

- 39            (1) not consider Medicaid and Medicare payment rates; and
- 40            (2) establish the payment rate at an amount equal to not less  
 41            than the greatest of the following payment rates paid by the  
 42            insurer during the previous twelve (12) months:

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- 1 (A) The highest payment rate paid to the dialysis treatment
- 2 provider for health care services rendered at a network
- 3 dialysis facility.
- 4 (B) The highest payment rate paid to the dialysis treatment
- 5 provider for health care services rendered at an out of
- 6 network dialysis facility.
- 7 (C) The highest payment rate paid to any dialysis
- 8 treatment provider for health care services rendered at a
- 9 network dialysis facility.
- 10 **Sec. 13. An insurer may not do any of the following at any time**
- 11 **after an insured elects coverage under a policy of accident and**
- 12 **sickness insurance:**
- 13 (1) Restrict benefits or increase costs to the insured in relation
- 14 to dialysis treatment, including the insured's out-of-pocket
- 15 expenses.
- 16 (2) Change coverage or benefits in any way that would affect
- 17 dialysis treatment provided at an out of network dialysis
- 18 facility.
- 19 **Sec. 14. An insurer shall not do the following:**
- 20 (1) Make changes in coverage under a policy of accident and
- 21 sickness in an attempt to cause an insured to elect Medicare
- 22 as the insured's primary coverage.
- 23 (2) Require an insured, as a condition of coverage, to travel
- 24 more than fifteen (15) miles or for longer than thirty (30)
- 25 minutes from the insured's home to obtain dialysis treatment,
- 26 regardless of whether the insured chooses to receive dialysis
- 27 treatment at a network dialysis facility or an out of network
- 28 dialysis facility.
- 29 **Sec. 15. An insurer shall do the following:**
- 30 (1) Make all claim payments for health care services provided
- 31 by a dialysis treatment provider payable only to the dialysis
- 32 treatment provider and not to the insured, regardless of
- 33 whether the health care services are rendered in a network
- 34 dialysis facility or an out of network dialysis facility.
- 35 (2) File with the department, not later than December 31 of
- 36 each year, an annual evaluation of the following:
- 37 (A) Whether the insurer's network of all dialysis treatment
- 38 providers is sufficient to provide health care services to
- 39 insureds covered under a policy of accident and sickness
- 40 insurance issued by the insurer.
- 41 (B) A detailed analysis of whether the requirements of
- 42 section 14(2) of this chapter are reflected in the actual

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distance and travel time required for insureds to obtain dialysis treatment.

(3) Maintain a network that at all times includes not less than fifty percent (50%) of the dialysis facilities in the geographic area in which health care services are provided by the network.

Sec. 16. The commissioner shall, not more than thirty (30) days after receiving a filing under section 15(2) of this chapter, approve the filing or make recommendations for changes to the network.

Sec. 17. The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 4. IC 27-13-1-11.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.6. "Dialysis facility" means an outpatient facility in Indiana at which a dialysis treatment provider renders dialysis treatment.

SECTION 5. IC 27-13-15-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Notwithstanding IC 27-13-1-12, as used in this section, "enrollee" refers only to an enrollee who requires dialysis treatment.

(b) As used in this section, "health maintenance organization" includes the following:

- (1) A limited service health maintenance organization.
- (2) An agent of a health maintenance organization or a limited service health maintenance organization.

(c) To the extent that IC 27-13-15-1(b) and IC 27-13-15-1(c) conflict with the requirements of this section, IC 27-13-15-1(b) and IC 27-13-15-1(c) do not apply with respect to the requirements of this section.

(d) An individual contract or a group contract must provide coverage for dialysis treatment regardless of whether the dialysis facility from which an enrollee obtains dialysis treatment is a participating provider.

(e) A health maintenance organization shall establish a payment rate for a health care service rendered by a dialysis treatment provider at a dialysis facility that is not a participating provider:

- (1) in consultation with the dialysis treatment provider; and
- (2) based on the following:
  - (A) The type of health care service rendered.
  - (B) The fees usually charged by the dialysis treatment provider.

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- 1 (C) The prevailing rate paid to a dialysis treatment  
 2 provider by health maintenance organizations in the same  
 3 geographic area during the preceding twelve (12) months.
- 4 (f) In establishing a payment rate under subsection (e), a health  
 5 maintenance organization shall:
- 6 (1) not consider Medicaid and Medicare payment rates; and  
 7 (2) establish the payment rate at an amount equal to not less  
 8 than the greatest of the following payment rates paid by the  
 9 health maintenance organization during the previous twelve  
 10 (12) months:
- 11 (A) The highest payment rate paid to the dialysis treatment  
 12 provider for health care services rendered at a dialysis  
 13 facility that is a participating provider.
- 14 (B) The highest payment rate paid to the dialysis treatment  
 15 provider for health care services rendered at a dialysis  
 16 facility that is not a participating provider.
- 17 (C) The highest payment rate paid to any dialysis  
 18 treatment provider for health care services rendered at a  
 19 dialysis facility that is a participating provider.
- 20 (g) A health maintenance organization may not do any of the  
 21 following at any time after an enrollee elects coverage under an  
 22 individual contract or a group contract:
- 23 (1) Restrict benefits or increase costs to the enrollee in  
 24 relation to dialysis treatment, including the enrollee's  
 25 out-of-pocket expenses.
- 26 (2) Change coverage or benefits in any way that would affect  
 27 dialysis treatment rendered at a dialysis facility that is not a  
 28 participating provider.
- 29 (h) A health maintenance organization shall not do the  
 30 following:
- 31 (1) Make changes in coverage under an individual contract or  
 32 a group contract in an attempt to cause an enrollee to elect  
 33 Medicare as the enrollee's primary coverage.
- 34 (2) Require an enrollee, as a condition of coverage, to travel  
 35 more than fifteen (15) miles or for longer than thirty (30)  
 36 minutes from the enrollee's home to obtain dialysis treatment,  
 37 regardless of whether the enrollee chooses to receive dialysis  
 38 treatment at a dialysis facility that is a participating provider  
 39 or a dialysis facility that is not a participating provider.
- 40 (i) A health maintenance organization shall do the following:
- 41 (1) Make all claim payments for health care services provided  
 42 by a dialysis treatment provider payable only to the dialysis

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1 treatment provider and not to the enrollee, regardless of  
 2 whether the health care services are provided in a dialysis  
 3 facility that is a participating provider or a dialysis facility  
 4 that is not a participating provider.

5 (2) File with the department, not later than December 31 of  
 6 each year, an annual evaluation of the following:

7 (A) Whether the health maintenance organization's  
 8 network of all dialysis treatment providers is sufficient to  
 9 provide health care services to enrollees covered under an  
 10 individual contract or a group contract entered into by the  
 11 health maintenance organization.

12 (B) A detailed analysis of whether the requirements of  
 13 subsection (h)(2) are reflected in the actual distance and  
 14 travel time required for enrollees to obtain dialysis  
 15 treatment.

16 (3) Maintain a participating provider network that at all times  
 17 includes not less than fifty percent (50%) of the dialysis  
 18 facilities in the health maintenance organization's service  
 19 area.

20 (j) The commissioner shall, not more than thirty (30) days after  
 21 receiving a filing under subsection (i)(2), approve the filing or  
 22 make recommendations for changes to the network.

23 (k) The department may adopt rules under IC 4-22-2 to  
 24 implement this section.

25 SECTION 6. IC 27-1-3-30 IS REPEALED [EFFECTIVE JULY 1,  
 26 2008].

27 SECTION 7. An emergency is declared for this act.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 166, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 166 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 166, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.131-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the

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policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

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## (7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance

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rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies

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or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer,

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any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

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(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to consumers.

(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

**(30) Violating IC 27-8-11-10, IC 27-8-11.1, or IC 27-13-15-5 concerning dialysis treatment.**

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States

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Armed Forces from;  
dishonest or predatory insurance practices.

SECTION 2. IC 27-8-11-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) The definitions in IC 27-8-11.1 apply throughout this section.**

**(b) An agreement entered into under section 3 of this chapter after April 30, 2008, must provide that if the insurer fails to pay, as specified by the agreement, for health care services rendered at a network dialysis facility, the insured is not liable for any sums owed by the insurer.**

SECTION 3. IC 27-8-11.1 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 11.1. Dialysis Treatment**

**Sec. 1. Except as provided in this chapter, the definitions in IC 27-8-11-1 apply throughout this chapter.**

**Sec. 2. As used in this chapter, "dialysis facility" means an outpatient facility in Indiana at which a dialysis treatment provider renders dialysis treatment.**

**Sec. 3. As used in this chapter, "insured" refers only to an insured who requires dialysis treatment.**

**Sec. 4. As used in this chapter, "insurer" includes the following:**

- (1) An administrator licensed under IC 27-1-25.**
- (2) An agent of an insurer.**

**Sec. 5. As used in this chapter, "network" refers to a group of providers, each of which has:**

- (1) individually; or**
- (2) as a member of a group;**

**entered into an agreement with a particular insurer under IC 27-8-11-3.**

**Sec. 6. As used in this chapter, "network dialysis facility" means a dialysis facility that has entered into an agreement with a particular insurer under IC 27-8-11-3.**

**Sec. 7. As used in this chapter, "out of network dialysis facility" means a dialysis facility that has not entered into an agreement with a particular insurer under IC 27-8-11-3.**

**Sec. 8. As used in this chapter, "policy of accident and sickness insurance" has the meaning set forth in IC 27-8-5-1. The term does not include the following:**

- (1) Accident-only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.**

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- (2) Coverage issued as a supplement to liability insurance.
- (3) Worker's compensation or similar insurance.
- (4) Automobile medical payment insurance.
- (5) A specified disease policy issued as an individual policy.
- (6) A limited benefit health insurance policy issued as an individual policy.
- (7) A short term insurance plan that:
  - (A) may not be renewed; and
  - (B) has a duration of not more than six (6) months.
- (8) A policy that provides a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.

**Sec. 9.** To the extent that IC 27-8-11-4.5(c) and IC 27-8-11-4.5(d) conflict with the requirements of this chapter, IC 27-8-11-4.5(c) and IC 27-8-11-4.5(d) do not apply with respect to the requirements of this chapter.

**Sec. 10.** A policy of accident and sickness insurance must provide coverage for dialysis treatment regardless of whether an insured obtains dialysis treatment from a network dialysis facility or an out of network dialysis facility.

**Sec. 11.** An insurer that uses a network shall establish a payment rate for a health care service rendered by a dialysis treatment provider at an out of network dialysis facility:

- (1) in consultation with the dialysis treatment provider; and
- (2) based on the following:
  - (A) The type of health care service rendered.
  - (B) The fees usually charged by the dialysis treatment provider.
  - (C) The prevailing rate paid to a dialysis treatment provider by insurers in the same geographic area during the preceding twelve (12) months.

**Sec. 12.** In establishing a payment rate under section 11 of this chapter, an insurer shall:

- (1) not consider Medicaid and Medicare payment rates; and
- (2) establish the payment rate at an amount equal to not less than the greatest of the following payment rates paid by the insurer during the previous twelve (12) months:
  - (A) The highest payment rate paid to the dialysis treatment provider for health care services rendered at a network dialysis facility.
  - (B) The highest payment rate paid to the dialysis treatment provider for health care services rendered at an out of

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network dialysis facility.

(C) The highest payment rate paid to any dialysis treatment provider for health care services rendered at a network dialysis facility.

**Sec. 13. An insurer may not do any of the following at any time after an insured elects coverage under a policy of accident and sickness insurance:**

- (1) Restrict benefits or increase costs to the insured in relation to dialysis treatment, including the insured's out-of-pocket expenses.
- (2) Change coverage or benefits in any way that would affect dialysis treatment provided at an out of network dialysis facility.

**Sec. 14. An insurer shall not do the following:**

- (1) Make changes in coverage under a policy of accident and sickness in an attempt to cause an insured to elect Medicare as the insured's primary coverage.
- (2) Require an insured, as a condition of coverage, to travel more than fifteen (15) miles or for longer than thirty (30) minutes from the insured's home to obtain dialysis treatment, regardless of whether the insured chooses to receive dialysis treatment at a network dialysis facility or an out of network dialysis facility.

**Sec. 15. An insurer shall do the following:**

- (1) Make all claim payments for health care services provided by a dialysis treatment provider payable only to the dialysis treatment provider and not to the insured, regardless of whether the health care services are rendered in a network dialysis facility or an out of network dialysis facility.
- (2) File with the department, not later than December 31 of each year, an annual evaluation of the following:
  - (A) Whether the insurer's network of all dialysis treatment providers is sufficient to provide health care services to insureds covered under a policy of accident and sickness insurance issued by the insurer.
  - (B) A detailed analysis of whether the requirements of section 14(2) of this chapter are reflected in the actual distance and travel time required for insureds to obtain dialysis treatment.
- (3) Maintain a network that at all times includes not less than fifty percent (50%) of the dialysis facilities in the geographic area in which health care services are provided by the

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network.

**Sec. 16.** The commissioner shall, not more than thirty (30) days after receiving a filing under section 15(2) of this chapter, approve the filing or make recommendations for changes to the network.

**Sec. 17.** The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 4. IC 27-13-1-11.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.6. "Dialysis facility"** means an outpatient facility in Indiana at which a dialysis treatment provider renders dialysis treatment.

SECTION 5. IC 27-13-15-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5. (a)** Notwithstanding IC 27-13-1-12, as used in this section, "enrollee" refers only to an enrollee who requires dialysis treatment.

**(b)** As used in this section, "health maintenance organization" includes the following:

- (1)** A limited service health maintenance organization.
- (2)** An agent of a health maintenance organization or a limited service health maintenance organization.

**(c)** To the extent that IC 27-13-15-1(b) and IC 27-13-15-1(c) conflict with the requirements of this section, IC 27-13-15-1(b) and IC 27-13-15-1(c) do not apply with respect to the requirements of this section.

**(d)** An individual contract or a group contract must provide coverage for dialysis treatment regardless of whether the dialysis facility from which an enrollee obtains dialysis treatment is a participating provider.

**(e)** A health maintenance organization shall establish a payment rate for a health care service rendered by a dialysis treatment provider at a dialysis facility that is not a participating provider:

- (1)** in consultation with the dialysis treatment provider; and
- (2)** based on the following:

- (A)** The type of health care service rendered.
- (B)** The fees usually charged by the dialysis treatment provider.
- (C)** The prevailing rate paid to a dialysis treatment provider by health maintenance organizations in the same geographic area during the preceding twelve (12) months.

**(f)** In establishing a payment rate under subsection (e), a health maintenance organization shall:

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- (1) not consider Medicaid and Medicare payment rates; and
- (2) establish the payment rate at an amount equal to not less than the greatest of the following payment rates paid by the health maintenance organization during the previous twelve (12) months:

- (A) The highest payment rate paid to the dialysis treatment provider for health care services rendered at a dialysis facility that is a participating provider.

- (B) The highest payment rate paid to the dialysis treatment provider for health care services rendered at a dialysis facility that is not a participating provider.

- (C) The highest payment rate paid to any dialysis treatment provider for health care services rendered at a dialysis facility that is a participating provider.

(g) A health maintenance organization may not do any of the following at any time after an enrollee elects coverage under an individual contract or a group contract:

- (1) Restrict benefits or increase costs to the enrollee in relation to dialysis treatment, including the enrollee's out-of-pocket expenses.

- (2) Change coverage or benefits in any way that would affect dialysis treatment rendered at a dialysis facility that is not a participating provider.

(h) A health maintenance organization shall not do the following:

- (1) Make changes in coverage under an individual contract or a group contract in an attempt to cause an enrollee to elect Medicare as the enrollee's primary coverage.

- (2) Require an enrollee, as a condition of coverage, to travel more than fifteen (15) miles or for longer than thirty (30) minutes from the enrollee's home to obtain dialysis treatment, regardless of whether the enrollee chooses to receive dialysis treatment at a dialysis facility that is a participating provider or a dialysis facility that is not a participating provider.

(i) A health maintenance organization shall do the following:

- (1) Make all claim payments for health care services provided by a dialysis treatment provider payable only to the dialysis treatment provider and not to the enrollee, regardless of whether the health care services are provided in a dialysis facility that is a participating provider or a dialysis facility that is not a participating provider.

- (2) File with the department, not later than December 31 of

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each year, an annual evaluation of the following:

(A) Whether the health maintenance organization's network of all dialysis treatment providers is sufficient to provide health care services to enrollees covered under an individual contract or a group contract entered into by the health maintenance organization.

(B) A detailed analysis of whether the requirements of subsection (h)(2) are reflected in the actual distance and travel time required for enrollees to obtain dialysis treatment.

(3) Maintain a participating provider network that at all times includes not less than fifty percent (50%) of the dialysis facilities in the health maintenance organization's service area.

(j) The commissioner shall, not more than thirty (30) days after receiving a filing under subsection (i)(2), approve the filing or make recommendations for changes to the network.

(k) The department may adopt rules under IC 4-22-2 to implement this section."

Page 1, line 1, delete "1. IC 27-1-3-30, AS AMENDED BY P.L.125-2005," and insert "6. IC 27-1-3-30 IS REPEALED".

Page 1, line 2, delete "SECTION 1, IS AMENDED TO READ AS FOLLOWS".

Page 1, line 3, delete ": Sec. 30. (a) As used in this section, "accident and" and insert ".".

Page 1, delete lines 4 through 17.

Delete pages 2 through 5, begin a new paragraph and insert: "SECTION 7. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 166 as printed January 25, 2008.)

FRY, Chair

Committee Vote: yeas 7, nays 2.

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